

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1097 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MEGHJIBHAI MANABHAI MADHAVI

Versus

MANAGER (LAW), GUJ.STATE FINANCE CORPN. & ANR.

Appearance:

None present for Petitioner

MR DG CHAUHAN for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/96

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round but none present for the petitioner. Heard Shri Chauhan, learned counsel for respondent and perused the Special Civil Application.

2. The petitioner has challenged the notice,

annexure 'C', dated 3.2.86, under the caption, "Recovery of our dues action under Section 29 of State Financial Corporation Act, 1951." The petitioner prayed for quashing of the said order and further directions were prayed for directing the respondent-Corporation to charge the rate of interest, at 4% from the petitioner-Firm.

3. On 24.2.86, this Court issued notice to the respondent and interim relief in terms of para-12(b) has been granted. Para-12(b) in the Special Civil Application reads as under:

Pending the hearing and final disposal of this petition the respondent No.1-Corporation be restrained from taking any action in pursuance to the Notice, annexure 'C', dated 3.2.86.

4. On 6.3.86, the order which has been made by this Court reads as under:

"Rule. Even though notice is served, nobody has remained present on behalf of Respondent No.1. Ad-interim relief to continue on the condition that petitioner would go on paying Rs.5,000/- per month to the respondent No.1. If the petitioner fails to pay Rs.5,000/- per month to the Respondent No.1 for any two months consecutively, then the stay order would stand vacated."

5. But from the order dated 24th December 1986 passed by this Court, it is clear that the petitioner has not complied with the condition of interim order dated 6.3.86, and hence the interim relief has been vacated. The petitioner was granted indulgence more than what it was necessary but he failed to take benefit of the indulgence granted to him. The petitioner was given loan of Rs.8,68,115/- on 7.6.74 by the Corporation and he made a default in payment thereof. The total dues as on 31st July 1985 came to Rs.9,78,218/-. The petitioner has been given notice by the Corporation for payment of said amount but he neglected to make payment thereof and as such, the Corporation has rightly proceeded against him under Section 29 of the State Finance Corporation Act, 1951. From averments made in this Special Civil Application, it comes out that the petitioner has shown his willingness to pay Rs.5,000/- per month by way of installments, against the dues. This Court has granted indulgence to the petitioner by allowing him to repay the loan by monthly installments of Rs.5,000/- each. But as stated earlier, he has not availed of that indulgence.

6. In the case of U.P. Finance Corporation vs. Naini Oxygen and Acetylene Gas Ltd., reported in (1995)

82 Company Cases 671, it was held that it is not a matter where the High Court should have stepped in and substituted its decision in judgment of the Corporation which should be deemed to know its interest, before whatever sympathies the Court had for the propriety of the Company. If the situation was bad on the date of impugned judgment, it has become worse today. To grant indulgence to the Company at this stage will be akin to flogging dead horse.

7. Interim relief granted by this Court stood vacated long back and by now the property of the petitioner would have been put to auction. It is really surprising that the learned counsel for the respondent is also not in a position to give out actual position as it exists today, but however, a notice has been given for recovery of the dues to the petitioner under Section 29 of the Act ten years earlier and by now the Corporation would have disposed of the property also. It is the action of the Corporation initiated under Section 29 of the Act which is not subject to judicial review of this Court unless malafides are shown. That is not the case here. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by and to function.

8. I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged. No order as to costs.

.....

(sunil)